

IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 29/01/2004

CORAM

THE HON'BLE MR.JUSTICE P.D. DINAKARAN

Writ Petition No.893 of 1997

1. T.Raju
2. R.Lakshmi .. Petitioners

-Vs-

1. The Government of Tamilnadu rep. by
Commissioner & Secretary to Govt.
Housing & Urban Development Department
Fort St.George, Madras-9.

2. The Collector
Madurai District at Madurai.

3. The Special Tahsildar
(Land Acquisition)
Madurai South Neighbourhood Scheme
Unit-I, Madurai. .. Respondents

Petition under Article 226 of the Constitution of India praying for a writ of Certiorari as stated therein.

For Petitioners : Mrs. Hemalatha

For Respondents : Mr.M.S. Palanisamy, AGP

:O R D E R

The petitioners seek a writ of Certiorari calling for the records relating to the land acquisition proceedings in G.O.Ms.No.537, Housing and Urban Development Department dated 5.4.1991, the notification issued under Section 4(1) of the Land Acquisition Act 1894 (Central Act 1/1894) and the Declaration in G.O.Ms.No.270, Housing and Urban Development Department dated 26.5.1992 issued under Section 6 of the Land Acquisition Act 1894 (Central Act 1/1984) and quash the same insofar as it relates to their property of an extent of 10 cents 317 sq.ft. in Plot Nos.2, 3 and 4 in S.No.77/2A, Thoppur Village, Madurai South Taluk, Madurai District.

2. According to the petitioners, they have purchased the land of an

extent of 10 cents 317 sq.ft. in Plot Nos.2, 3 and 4 in S.No.77/2A, Thoppur Village, Madurai South Taluk, Madurai District in the year 1989, 1984 and 1985 respectively. However, the notification under Section 4(1) of the Land Acquisition Act (for brevity the "Act") in G.O. Ms.No.537, Housing and Urban Development Department dated 5.4.1991 and declaration issued under Section 6 of the Act in G.O.Ms.No.270, Housing and Urban Development Department dated 26.5.1992 were neither served on them nor on their vendor. Moreover, declaration under Section 6 of the Act was issued after one year from the date of publication of notification under Section 4(1) of the Act and therefore, the same is illegal. Further, they have not been served with a copy of the award till date. Hence, the above writ petition.

3. The only contention raised by the learned counsel for the petitioners is that the petitioners, who are admittedly subsequent purchasers, have not been served with any notice under Section 4(1) of the Act or for

enquiry under Section 5-A of the Act or before passing declaration under Section 6 of the Act and therefore, the impugned acquisition proceedings is illegal.

4. In U.P. JAL NIGAM v. KALRA PROPERTIES (P) LTD. reported in (1996) 3 SCC 124, the Apex Court has held that after the notification under Section 4(1) is published in the Gazette, any encumbrance created by the owner does not bind the Government and the purchaser does not acquire any title to the property and the sale is void against the State and the purchaser acquired no right, title or interest in the land and consequently, the subsequent purchaser cannot challenge the validity of the notification or the regularity in taking possession of the land before publication of the declaration under Section 6 of the Act.

5. In view of the above settled law that the subsequent purchaser has no right to challenge the acquisition proceedings, the petitioners have no locus standi to challenge the acquisition proceedings, except to establish their right in the award proceedings. Since it is reported by the learned Additional Government Pleader that the vendor has already received the award, the petitioners are at liberty to work their rights against the vendor in appropriate civil proceedings.

The writ petition is dismissed. No costs.

Index : Yes

Internet : Yes

kpl

To

1. The Commissioner & Secretary to Govt.
Housing & Urban Development Department
Fort St.George, Madras-9.

2. The Collector

Madurai District at Madurai.

3. The Special Tahsildar

(Land Acquisition)

Madurai South Neighbourhood Scheme

Unit-I, Madurai.

□